IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.725 OF 2003
IN
S.C.SUIT NO.1648 OF 2003

Sundar Channaya Mulya
aged about 65 years, Occ.: Business
residing at Room No.13, E-3 Building
Sardar Nagar No.3, Sio-Koliwada
Bombay 400 022. .. Appellant (Org.Plaintiff)

Versus

Mulchand Deepchand Chopra
resident of Bombay, having his address
as Vijay Juice Centre, Shop No.10
Beteen Building Nos.10 and 11 of
Harekniwas, Sion (West) Bombay 400 022. .. Respondent (Org.Defendant)

Ms.Vidya Manjrekar i/b.Mr.P.M.Havnur for the Appellant.

Mr.Mukesh Subramaniam absent.

CORAM: SMT.NISHITA MHATRE, J.
DATED: 23RD NOVEMBER 2004

ORAL JUDGMENT :

. This Appeal From Order has been directed against the order of the trial Court dated 20th June 2003 passed in S.C.Suit No.1648 of 2003. The trial Court has directed that the suit premises could be approximately valued at Rs.7000/- to Rs.7500/- per sq. ft. and, therefore, the Plaintiff i.e. the Appellant herein is directed to revalue the Suit on the basis of this valuation fixed by the trial Court. It was further directed that the Plaint would be returned if Court Fees were not paid on the appropriate valuation of the Suit.

2. The Plaintiff has filed a Suit for injunction and declaration. He has valued the Suit at Rs.5000/-. The Respondent had submitted before the trial Court that the Suit must be valued at the market value of the suit premises which can be ascertained from the Ready Reckoner of 2002 issued by the State of Maharashtra. The Plaintiff had contended that the suit premises was a cupboard between two buildings and the Plaintiff was not the owner of the land and, therefore, there was no value since nobody would purchase the suit premises. On the basis of the photograph produced, the trial Court had found that the suit premises did not consist of a cupboard but were a stall and on this basis the trial Court assessed the valuation to be approximately Rs.7000/- to Rs.7500/- per sq.ft.

3. Ms.Manjrekar for the Appellant submits that the trial Court has erred in arriving at this conclusion. She submits that the trial Court could not have relied on the Ready Reckoner issued by the State of Maharashtra for valuation of the Suit as that would not give a clear idea as to how the premises held by the Appellant should be valued. Furthermore, according to the learned Advocate, under Section 5 of the Bombay Court Fees Act, 1959 (hereinafter referred to as "the Act"), when there is any difference in the City Civil Court as to what

should be the Court fee payable, the question is to be referred to the Registrar of the City Civil Court whose decision is expected to be final subject to revision on an application within 30 days from the date of the decision by the Register concerned or by the Officer appointed in that behalf.

4. The only dispute which arises for consideration in this Appeal From Order is whether the trial Court should have relied on the Ready Reckoner and fixed the Court fee payable or should have referred the matter to the Registrar of the City Civil Court. Section 5 of the Act reads thus :

> "5. **Fees on documents filed, etc., in Courts or in public offices.**
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> (1) No document of any of the kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.
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> (2) When any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the question arises in the High Court, be referred to the taxing officer whose decision thereon shall be final, subject to revision, on an application, made within thirty days from the date of the decision, by the suitor or his pleader or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by the Judge of the High Court as the Chief Justice

> shall appoint either generally or specially in this behalf.
>
> (3) When any such difference arises in the City Civil Court Bombay the question shall be referred to the Registrar of the City Civil Court whose decision shall be final, subject to revision, on an application, made within thirty days from the date of the decision, by the party concerned or such officer as may be appointed in this behalf by the State Government, by the Principal Judge or such other Judge, of the said Court as the Principal Judge shall appoint either generally or specially in this behalf.
>
> (4) When such difference arises in any other court, the question shall be referred to the final decision of the Judge presiding over such Court. "

5. The provisions of Section 5 of the Act do not leave any room for doubt that the procedure to be adopted when there is a difference between the officer appointed for overseeing payment of Court fees and a litigant in the City Civil Court, Bombay regarding what should be the Court fees payable, it is to be referred to the Registrar of that Court. The Registrar is then to decide the issue regarding payment of Court fees and to quantify the same. If the litigant is aggrieved by any decision of the Registrar in this behalf, the litigant is at liberty to file a revision application within thirty days from such order being passed. However, this Section is of no relevance.

6. Under Section 8 of the Act, if the Court is of the opinion that the subject matter of the suit has been

wrongly valued, the Court may revise the valuation and determine the correct valuation by holding such inquiry as it deems fit. Therefore, the power to vary the Court fee by holding an inquiry is always conferred on the Court. In the case of *Miss Aninha D'Costa* vs. *Mrs.Parvatibai M.Thakur*, **1996 Mh.L.J. 74**, the Division Bench of this Court considered the provisions of Sections 8, 9 and 10 of the Act. The Division bench was of the view that the manner of inquiry which is to be conducted by the Court under Section 8 of the Act is left to the Court. Such inquiry depends on the nature of the subject matter of the suit. Strict procedure which applies for decisions in suits need not be applied to such an inquiry. The inquiry is not to be regarded as strictly judicial. The Division bench also considered the terminology used in Section 6 of the Act. Section 6 stipulates the computation of fees payable in certain suits. What is the interpretation of the term "market value" has been considered by the Division Bench. It has been laid down that ordinary rule of twelve and half times the annual income should be applied in a suit for possession of the property. The reason for this has been explained by the Division bench. According to the Division Bench, the market value would mean the price which a willing purchaser would pay to a willing seller for the property on the day when the suit is filed. It is after considering

what should be the market value that the Court is required to determine the Court fees payable at the time of filing of the suit. There is nothing on record to indicate that the market value of the premises would be Rs.7000/- to Rs.7500/- per sq.ft.. The Ready Reckoner cannot be the basis for deciding the market value of the suit premises. The Appellant claims that the suit premises are merely a cupboard while the Defendant claims that it is a stall. The trial Court has accepted the fact that the suit premises are a stall on the footpath between two buildings. It is difficult to believe that the market value would be Rs.7000/- to Rs.7500/- per sq.ft. for such a structure.

7. The Suit has been filed for declaration and injunction and, therefore, it will have to be valued in accordance with Section 6(j) of the Act. Accordingly, the order of the trial Court is set aside. Appeal allowed. No order as to costs.

8. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.833 of 2003 and the same is disposed of accordingly.

9. Certified copy expedited.